

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-1122

JEANNE M. SHOBERT,

Plaintiff - Appellant,

versus

EMPLOYEE BENEFITS ADMINISTRATIVE COMMITTEE OF
THE EMPLOYEES' RETIREMENT PLAN OF USEC,
INCORPORATED,

Defendant - Appellee,

and

TIM HANSEN,

Defendant.

No. 05-1528

JEANNE M. SHOBERT,

Plaintiff - Appellant,

versus

EMPLOYEE BENEFITS ADMINISTRATIVE COMMITTEE OF
THE EMPLOYEES' RETIREMENT PLAN OF USEC,
INCORPORATED,

Defendant - Appellee.

Appeals from the United States District Court for the District of Maryland, at Greenbelt. Alexander Williams, Jr., District Judge. (CA-03-2990-8-AW)

Submitted: June 24, 2005

Decided: July 29, 2005

Before LUTTIG, WILLIAMS, and KING, Circuit Judges.

No. 05-1122 dismissed; No. 05-1528 affirmed by unpublished per curiam opinion.

Barbara J. Kraft, BEINS, AXELROD, KRAFT, GLEASON & GIBSON, Washington, D.C., for Appellant. Donald Lawrence Havermann, Terra Elswick Castaldi, MORGAN, LEWIS & BOCKIUS, L.L.P., Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Jeanne M. Shobert appeals the district court's order granting the Employee Benefits Administrative Committee of the Employees' Retirement Plan of USEC, Inc. ("Committee") summary judgment (No. 05-1122) and the district court's order denying Shobert's motion for other relief requesting reconsideration of its order denying Shobert's motion for extension of time to file a notice of appeal (No. 05-1528). The Committee has filed a motion to dismiss Shobert's appeal in No. 05-1122 for lack of jurisdiction because the notice of appeal challenging the district court's order granting the Committee summary judgment was not timely filed. We grant the Committee's motion to dismiss No. 05-1122 and affirm the district court's order denying Shobert's motion for other relief in No. 05-1528.

Parties are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "mandatory and jurisdictional." Browder v. Director, Dep't of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's judgment order granting summary judgment was entered on the docket on November 22, 2004. The

notice of appeal was filed on January 21, 2005. Because Shobert failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we grant the Committee's motion to dismiss the appeal.

Further, this court reviews the denial of a motion to reconsider for abuse of discretion. NOW v. Operation Rescue, 47 F.3d 667, 669 (4th Cir. 1995). Because Shobert's notice of appeal was untimely and because she failed to demonstrate excusable neglect, the district court did not abuse its discretion in denying her motion for other relief, which, like her motion for extension of time, argued only that the time for appeal should be extended under Fed. R. App. P. 4(a)(5). Accordingly, we affirm the district court's order in No. 05-1528.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

No. 05-1122 DISMISSED
No. 05-1528 AFFIRMED